

ESTTA Tracking number: **ESTTA675952**

Filing date: **06/03/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056509
Party	Plaintiff Autodesk, Inc.
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Date	06/03/2015
Attachments	2015-06-03 Autodesk Motion to Quash Notice of Deposition .pdf(219171 bytes)

AUTODESK, INC.,

V.

Respondent.

Cancellation No. 92056509

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more appropriate sources of relevant information, and further, none of Autodesk's disclosures or discovery responses identify or suggest in any way that Mr. Bass has unique or superior personal knowledge pertaining to this proceeding. As such, Respondent's Notice of Deposition appears to be a classic case of the type of abusive and harassing tactics proscribed by discovery rules and well-established precedent. Petitioner therefore respectfully requests that the Board enter an order quashing Respondent's Notice of Deposition.

I. PROCEDURAL POSTURE

Petitioner objected to the Notice of Deposition via email to Respondent's counsel dated May 20, 2015. Following refusal by Respondent to withdraw the Notice of Deposition during a telephonic conference with the Board on May 27, 2015, the Board granted Autodesk specific leave to make this motion.

II. FACTUAL BACKGROUND

As the Board is aware, discovery in this proceeding is nearly completed. Autodesk has provided initial disclosures, comprehensive written and supplemental responses to two sets of interrogatories and requests for admission served by Respondent, and over 1500 documents (amounting to over 10,000 pages) in response to two sets of document requests. Autodesk has identified several employees who may have information relevant to this proceeding and has further agreed to make three employees available for oral deposition as Rule 30(b)(6) witnesses. Autodesk has never identified Carl Bass, its President and Chief Executive Officer, as having unique or superior personal knowledge pertaining to this proceeding.

Despite this, Respondent served a Notice of Deposition of Carl Bass on May 19, 2015. Given the fact that there is nothing to suggest that Mr. Bass is an appropriate witness in this matter, and given that Respondent has failed to exhaust less intrusive methods of discovery (including, namely, the deposition of available lower-level employees who have been identified as having relevant knowledge), this conduct appears to be a transparent attempt to subject Mr. Bass to abuse and harassment.

ARGUMENT

III. THE BOARD HAS BROAD DISCRETION TO PROTECT THE PARTIES FROM HARASSMENT, ANNOYANCE, OR UNDUE BURDEN

Federal Rule of Civil Procedure 26(c) grants courts broad discretion to control the timing of discovery, and to protect parties from discovery that would impose “annoyance, embarrassment, oppression, or undue burden or expense.” *See* FED. R. CIV. P. 26(c)(1). Further, Rule 26(b)(2) provides that discovery “shall” be limited by the court if the discovery sought is “obtainable from some other source that is more convenient, less burdensome, or less expensive.”

Such intervention by the Board is appropriate in this case because Mr. Bass is Autodesk’s most senior executive, has no unique or superior personal knowledge of the relevant facts, and Respondent has not made any attempt to obtain the information it seeks through less intrusive means—namely, the deposition of the lower-level employees identified by Autodesk in its Rule 26(a) initial disclosures and written discovery responses. Under these circumstances, an order quashing the Notice of Deposition is necessary to prevent undue burden and harassment. *See* FED. R. CIV. P. 26(c).

A. An “Apex Deposition” Is Properly Restricted Where the Executive Lacks Relevant Personal Knowledge and Less Intrusive Discovery Has Not Been Exhausted

Recognizing that apex depositions give rise to a tremendous potential for abuse and harassment, federal courts and the Board exercise their power under Rule 26 to restrict efforts to depose senior executives where, as here, the executive has little to no personal knowledge of the facts of the case and the party seeking the deposition has failed to show that the information sought is unavailable through less intrusive means of discovery. *See Pioneer Kabushiki Kaisha v. Hitachi High Techs. Am. Inc.*, 74 USPQ2d 1672, 1674-76 (TTAB 2005) (granting protective order prohibiting deposition of high-level executives where there was no evidence to demonstrate their unique or superior personal knowledge of relevant facts); *FMR Corp. v. Alliant Partners*, 51 USPQ2d 1759 (TTAB 1999) (applying apex doctrine to protect executives of FMR

Corp. from being deposed); *see, e.g., Thomas v. IBM*, 48 F.3d 478, 483-84 (10th Cir. 1995) (affirming order blocking deposition of IBM's Chairman); *Lewelling v. Farmers Ins. of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir. 1989) (upholding protective order barring deposition of Chairman and CEO of Farmers Insurance where he had no personal knowledge regarding pertinent facts); *Cardenas v. Prudential Ins. Co. of Am.*, Civ. 99-1421, 2003 U.S. Dist. LEXIS 9510, at *2-*5 (D. Minn. May 16, 2003) (rejecting efforts to depose top executive where proponent failed to show that executive possessed information that could not be obtained from lower-level employees or other sources); *Baine v. General Motors Corp.*, 141 F.R.D. 332, 334-36 (M.D. Ala. 1991) (denying deposition of executive because the plaintiffs had neither shown that he had "superior or unique personal knowledge" of relevant facts nor pursued the sought-after information through lower-level depositions or a corporate deposition).

Respondent's proposed deposition of Mr. Bass is precisely the kind of deposition that this body of law was designed to prevent. First, Mr. Bass does not have unique or superior personal knowledge of facts relevant to this proceeding. Mr. Bass was not identified in Petitioner's Rule 26(a) initial disclosures and was never mentioned in Petitioner's responses to Respondent's interrogatories or requests for admission. *See* FED. R. CIV. P. 26(a) (party must identify "each individual likely to have discoverable information . . . that the disclosing party may use to support its claims or defenses"); *Pioneer Kabushiki Kaisha*, 74 USPQ2d 1672, 1674-76 (prohibiting deposition of executive where only three emails referenced such executive, and were not written by, directed exclusively to, nor elicited any written response from the executive); *FMR Corp.*, 51 USPQ2d 1759, 1760, 1764 (rejecting plaintiff's effort to depose top corporate executives who were not identified in discovery response as persons knowledgeable of relevant issues and where there was "no evidence in the record that the officials have unique or superior personal knowledge of relevant facts"). Mr. Bass was not identified in Autodesk's initial disclosures or any of Autodesk's written discovery responses, is not a party to any of the communications produced by Petitioner, and was not identified or referenced in any manner

indicating any connection or unique or superior personal knowledge of facts relevant to this proceeding by any of the more than 1500 documents produced by Petitioner.

Second, there is no dispute that Respondent has failed to exhaust less onerous methods of discovery. *See, e.g., FMR Corp.*, 51 USPQ2d at 1764; *Thomas*, 48 F.3d at 484; *Baine*, 141 F.R.D. at 335-36. To date, Respondent has not conducted any depositions. Petitioner has clearly communicated to Respondent that it will make available three employees for the noticed Rule 30(b)(6) deposition, which covers 25 separate topics. In addition, Petitioner is making an employee available for a noticed Rule 30(b)(1) deposition in the United States, and its Canadian witnesses remain available via deposition on written question; these employees, unlike Mr. Bass, are identified as persons with relevant knowledge in Petitioner's Rule 26(a) disclosures. Accordingly, at this stage, instead of targeting Autodesk's President and CEO, Respondent can (and should) pursue less intrusive discovery—namely, deposition of lower-level employees with firsthand knowledge of relevant facts.

Thus, the Board should enter an order quashing the Notice of Deposition of Carl Bass.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board grant this Motion to Quash.

Dated: June 3, 2015

WILSON SONSINI GOODRICH & ROSATI
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CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **AUTODESK'S MOTION TO QUASH THE NOTICE OF DEPOSITION OF ITS PRESIDENT AND CHIEF EXECUTIVE OFFICER** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
Sneed PLLC
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Davidson, NC 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on June 3, 2015.


